

**REMARKS**

Applicant has carefully reviewed the final Office Action mailed June 16, 2004, as well as the subsequent Action mailed September 10, 2004 responding to Applicant's Request for Reconsideration of the decision to withdraw claims 12, 14, 16, and 18-20 from consideration. Traversal of that decision is maintained on the grounds stated in the Request for Reconsideration (which is incorporated herein by reference), and a Petition requesting reinstatement of these claims on such grounds is submitted contemporaneously herewith.

Applicant respectfully traverses the "new" rejections of claims 1, 2, 4-6, 9, and 10 as allegedly being anticipated by U.S. Patent No. 3,951,284 to Fell et al. First of all, the stated anticipation rejections ignore express limitations in the claims. For example, the rejection made at the top of page 3 of the Office Action ignores the requirement in claim 1 of "elongated" panels. Furthermore, the contention is made that the reference discloses an "access panel," when the claim actually requires an "access opening." Accordingly, the Examiner has not shown with the requisite strict identity that each and every limitation of the claim is met, which is of course an unwavering requirement for maintaining an anticipation rejection.

The reason for this "oversight" is clear. The Fell et al. patent simply does not disclose "an access opening along at least one [elongated] *side panel* adapted for loading and unloading said cargo." Rather, it merely shows the conventional opening formed in the *end*

*panel* of the liner. On page 5 of the Action, the Examiner *expressly acknowledges* this fact by stating, “. . .Fell et al. do not explicitly teach the opening in the side of the liner. . .,” yet then surprisingly attempts to assert otherwise by making an anticipation rejection of claim 1 based on this patent. Similarly, independent claim 9 requires “cutting an access opening along at least one [elongated] *side panel* . . .,” which the Examiner concedes that the Fell et al. patent does not disclose. Accordingly, prosecution was ostensibly reopened to state rejections that the Examiner’s own remarks admit are untenable and unsupported.

With regard to the obviousness rejection of claims 1, 2, 4-6, 9, 10, 13, 15 and 17 over the Fell et al. patent, it is submitted that it is deficient for several reasons. First of all, Section 2143.01 of the Manual of Patent Examining Procedure provides that “[i]f the proposed modification . . . of the prior art would change the principle of operation of the prior art invention being modified, *then the teaching . . . [is] not sufficient to render the claims prima facie obvious.*” (emphasis added). In this instance, modifying the liner in the proposed manner would “change the principle of operation” of the “prior art invention” disclosed in the Fell et al. patent, which at col. 7, ll. 47-48 explains that “[o]nce the container has reached its destination *some means must be provided to tilt the container.*” (emphasis added). Moreover, this patent teaches that “. . .as the container empties it is tipped to allow the bulk material to flow down *towards the unloading end of the liner*” (col. 8, ll. 4-6, emphasis added).

From the foregoing, it is clear that the inventors only contemplated having an opening in the end of the liner, not in the side panel of the liner as required by claims 1, 9, and 13 (even if their patent attorney intended to leave open the possibility of asserting infringement if the opening is placed in a different panel of the liner). Furthermore, modifying the liner as proposed would not allow for the desired “flow” of materials discussed in the Fell et al. patent as being an advantage of the invention. Even if a corresponding container, such as a rail car, was capable of tilting on its side, the contents of the container would not flow to the unloading *end* of the liner. Instead, only a portion of the contents would exit the side opening of the container, while the remainder would be pressed against the side wall of the container. Since the proposed liner modification would dramatically change the operation of “prior art invention” disclosed in the Fell et al. patent, it is believed that the *prima facie* case of obviousness is lacking.

Additionally, the passage cited by the Examiner as allegedly suggesting the proposed modification merely states that “. . .there is provided a device for transporting bulk material in a shipping vehicle *having walls, one of which defines a door opening* and doors attached thereto. . .” (emphasis added). Rather than suggesting that “the door to the container can be in any of the walls to the container,” this passage merely states that one of the *walls* defines a *door opening*. To stretch this passage as proposed would *require* the entire elongated side wall of the container “define” a door opening. Not only would this result in a structurally

unsound container, but it would render the Fell et al. patent inoperable. In particular, if the entire side wall defines the door of the container, portions of the liner would simply fall out of the container when it is tilted, as *must* be done for emptying the contents of the container according to the Fell et al. patent. Clearly, this is not the end result desired by this patent, which teachings must be construed in *pari materia* rather than in the piecemeal approach taken by the Examiner. See M.P.E.P. Section 2141.03 (“*A prior art reference must be considered in its entirety*, i.e., as a whole, including portions that would lead away from the claimed invention.”) (emphasis added).

As has been pointed out in several communications to no avail, the rejections of the several of the dependent claims are also deficient. For example, claim 5 requires that the opening is along the mid-point of one of the elongated side panels. Since it is conceded that the Fell et al. patent does not even teach providing such an opening in a side panel, it certainly cannot teach or suggest providing it at a mid-point of the panel. Moreover, even if the opening in the liner disclosed in the Fell et al. patent were provided at the mid-point of the end panel, it is emphasized that this liner would not work in a container with a side door, since the elongated sides of that liner would not “substantially” match the corresponding sides of the container (especially since the liner 20 disclosed is only of “3/4” height; see col. 5, lines 38-39). Even assuming for the sake of argument that the reference would lead a skilled artisan to place the opening in the elongated side panel (which is not

conceded), nothing would motivate one to provide it at the midpoint.

As for claim 6, the contention made in support of unpatentability is that the Fell et al. patent teaches “access openings for containers having openings on one or more sides depending on the configuration of the container.” However, the Examiner fails to cite to any portion of the document as supplying this teaching. Applicant’s Counsel scoured this reference, but finds that it is limited to providing one or more access openings on a *single end panel* of a liner. It simply does not contemplate providing openings in a second side panel substantially opposite the first opening, as expressly required by the claim. This is because the Fell et al. liner is intended for use on a trailer or other container including doors on only a single end. Thus, it certainly cannot “suggest” this modification, and no other convincing line of reasoning is provided as to why a skilled artisan would want to provide a second opening at the opposite end of the liner disclosed in the Fell et al. patent, when the opening would simply face the end wall of the trailer near the cab, which is *always* closed.

The Examiner further rejects claim 7 based on the combination of the Fell et al. patent and the Krien ‘197 patent (which incidentally is owned by the Applicant). Again, the rejection made plainly ignores what is actually required by this claim, and is thus fatally deficient.

As for independent claim 13, it recites a liner for an elongated container for use in shipping cargo comprising four elongated panels of impervious film adapted to substantially

match the elongated sides, top and bottom of the container, with each elongated panel having a first length. First and second end panels complete the liner, each having a second length less than the first length, and an access opening is formed along at least one side panel adapted for loading and unloading the cargo. The Fell et al. patent plainly does not disclose, teach, or suggest providing a liner with a “longer” side panel having an access opening and “shorter” end panels, as is claimed. Hence, it cannot anticipate or render the claimed invention obvious.

Dependent claim 15 requires that the first and second “shortened” end panels are free of any openings. The Fell et al. patent discloses the exact opposite arrangement. Thus, it certainly cannot anticipate or render obvious the invention of this claim.

Independent claim 17 recites a liner for an elongated container for use in shipping cargo comprising elongated top, bottom, first side and second side panels of impervious film adapted to substantially match the elongated top, bottom and sides of the container, along with uninterrupted first and second end panels free of any openings to complete the liner. A first access opening along the first side panel adapted for loading and unloading the cargo, and a second access opening along the second side panel substantially opposite the first opening for also loading and unloading the cargo. Regardless of the Examiner’s position with respect to where the opening is located, it must be conceded that neither the Fell et al. patent nor any of the other cited references disclose, teach, or suggest providing multiple

openings in different panels of a liner. Consequently, this claim is believed to be in condition for allowance.

In summary, Applicant has addressed all issues raised in the Office Action. In particular, the manner in which claims 1, 9, 13, and 17 patentably distinguish over the Fell et al. patent has been explained convincingly and in detail. The independent patentability of several of the dependent claims is also established. Since all claims are believed to be in condition for allowance, an early notice to this effect is earnestly solicited. However, if the Examiner finds that some minor issue has been overlooked, he is encouraged to contact the Applicant's Counsel at the number listed below in order to reduce costs and expedite the allowance of the application. Also, any fees due for processing this document may be debited from Deposit Account 11-0978.

Respectfully submitted,

**KING & SCHICKLI, PLLC**

A handwritten signature in black ink, appearing to read 'Andrew D. Dorisio', is written over the firm name 'KING & SCHICKLI, PLLC'.

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